

**Chesapeake Bay Local Assistance Board
Monday, March 21, 2005
Science Museum of Virginia
2500 West Broad Street
Richmond, Virginia**

Chesapeake Bay Local Assistance Board Members Present

Donald W. Davis, Chairman
David L. Bulova
Sue H. Fitz-Hugh
Beverly Harper

Walter J. Sheffield, Vice Chairman
William E. Duncanson
David C. Froggatt

Chesapeake Bay Local Assistance Board Members Not Present

Gale A. Roberts

Michael A. Rodriguez

Staff Present

Joseph H. Maroon, Director
C. Scott Crafton, Acting Director, Division of Chesapeake Bay Local Assistance
Roger Chaffe, Office of the Attorney General
Martha Little, Chief of Environmental Planning
Shawn Smith, Principal Environmental Planner
Heather C.A. Mackey, Principal Environmental Planner
Beth Baldwin, Senior Environmental Planner
Brad Belo, Senior Environmental Planner
David C. Dowling, Policy, Planning and Budget Director
Michael R. Fletcher, Director of Development

Local Government Officials Present

Chesterfield County

Joan Salvati, Water Quality Administrator

Town of Exmore

Katrina Hickman

County of Fairfax

Noel Kaplan, Fairfax County Planning and Zoning

City of Hampton

Keith Cannady

James City County

Darryl Cook, Environmental Director

City of Norfolk
Brian Ballard
Lee Rosenberg

Town of Occoquan
Patricia Conway, Mayor

City of Richmond
Debra Byrd, Permits & Engineering Services Administrator

Others Present

Robert Duckett, Peninsula Housing and Builders Association, Inc.
Seth Sanders, Williamsburg Community Builder's Association

Call to Order – Roll Call

Chairman Davis called the meeting to order at 10:14 a.m. At the calling of the roll a quorum was declared present.

Mr. Davis introduced Mr. Maroon, Mr. Crafton and Mr. Chaffe.

Consideration of the Minutes

Mr. Davis noted that minutes from four prior meetings needed to be approved:

- December 13, 2004 Board Meeting
- February 15, 2004 Northern Area Review Committee Meeting
- February 15, 2005 Southern Area Review Committee Meeting
- November 17, 2004 Board Retreat

MOTION: Mr. Sheffield moved that all four sets of minutes be approved as submitted with the notation that the November 17 Board Retreat minutes be amended to show that he was in attendance.

SECOND: Mr. Bulova.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Director's Report

Mr. Maroon gave the Director's report. He gave a review of the highlights of the meeting agenda.

Mr. Maroon noted that the Department has advertised for a permanent director for the Division of Chesapeake Bay Local Assistance.

Mr. Maroon gave an overview of actions in the 2005 General Assembly Session. A copy of that report is attached as Attachment #1.

Ms. Fitzhugh asked if the Department supported SB1056 regarding expansion of the Chesapeake Bay Preservation Act jurisdictional boundaries.

Mr. Maroon noted that the Administration supported this bill. He said this was a perennial issue that did not get reported out of committee.

Consent Agenda

MOTION: Mr. Bulova moved that the Chesapeake Bay Local Assistance Board approve the following consent items as recommended by the respective staff reports:

City of Falls Church, Review of Phase I conditions
Town of Kilmarnock, Review of Phase I conditions
Town of Kilmarnock, Phase II deadline extension request
Town of Montross, Review of Phase I conditions
Northumberland County, Review of Phase I conditions
Westmoreland County, Review of Phase I conditions
King William County, Phase I revisions
Westmoreland County, Phase II revisions
Fairfax County, Phase II revisions
City of Portsmouth, Review of Phase I conditions
City of Virginia Beach, Review of Phase I conditions
Isle of Wight County – Review of Phase I conditions

SECOND: Mr. Duncanson

DISCUSSION: None

VOTE: Motion carried unanimously.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

March 21, 2005

RESOLUTION

LOCAL PROGRAM, PHASE I
CITY OF FALLS CHURCH-#24

Modification – Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9 VAC 10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1 (a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the City of Falls Church adopted a local Phase I program on November 12, 1990 and amended this program on November 11, 1991, and

WHEREAS on December 1, 1994, the City's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

WHEREAS on December 10, 2001, the Chesapeake Bay Local Assistance Board adopted revisions to the Chesapeake Bay Preservation Area Designation and Management Regulations and set March 1, 2003 as the deadline for local governments to adopt revisions to their local ordinances; and

WHEREAS on February 18, 2003, the Chesapeake Bay Local Assistance Board extended the compliance deadline from March 1, 2003 to December 31, 2003, and

WHEREAS the City of Falls Church adopted a revised local program to comply with §§ 9 VAC 10-20-60 1 and 2 of the Regulations on February 9, 2004; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

WHEREAS on September 20, 2004, the Chesapeake Bay Local Assistance Board found the City of Falls Church's revised Phase I program consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations provided the City adequately address one condition by December 31, 2004; and

WHEREAS the City of Falls Church amended its local program on September 13, 2004 to comply with the Board's September 20, 2004 resolution; and

WHEREAS staff reviewed the amendments made to the City of Falls Church's revised program for consistency with the Act and Regulations; and

WHEREAS on February 15, 2005 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the City of Falls Church's revised Phase I program consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations

The Director of the Department of Conservation and Recreation certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on March 21, 2005.

Joseph H. Maroon
Director
Department of Conservation and Recreation

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
March 21, 2005
RESOLUTION**

**LOCAL PROGRAM, PHASE I
TOWN OF KILMARNOCK - #77**

Determination of Consistency– Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9VAC10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1 (a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the Town of Kilmarnock adopted an amended Phase I local program to comply with §§ 9 VAC 10-20-60 1 and 2 on March 3, 2003; and

WHEREAS on March 22, 2004 the Chesapeake Bay Local Assistance Board found the Town of Kilmarnock's Phase I program consistent with five recommendations for consistency that were to be addressed by the Town and set a compliance date of December 31, 2004; and

WHEREAS the Town Council for the Town of Kilmarnock adopted amendments to the Phase I program on November 15, 2004; and

WHEREAS staff has reviewed the Town of Kilmarnock's revised Phase I program for consistency with the previous consistency recommendations and the Act and Regulations; and

WHEREAS on February 15, 2005 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendations in the staff report and of the Review Committee; now

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the Town of Kilmarnock's Phase I program consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on March 21, 2005.

Joseph H. Maroon
Director
Department of Conservation and Recreation

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

March 21, 2005

RESOLUTION

LOCAL PROGRAM, PHASE II
TOWN OF KILMARNOCK - #77

Extension of Compliance Deadline – To December 31, 2005

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of state waters into each locality's comprehensive plan; and

WHEREAS § 9 VAC 10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the element in subsection 3 shall be adopted by local governments; and

WHEREAS § 10.1-2103 10 of the Chesapeake Bay Preservation Act authorizes the Board to take administrative and legal actions to ensure compliance by counties, cities, and towns with the provisions of the Act; and

WHEREAS the Town Council of Kilmarnock adopted a comprehensive plan on October 25, 1999; and

WHEREAS on June 19, 2000, the Chesapeake Bay Local Assistance Board found the Town of Kilmarnock's revised plan consistent with the four recommendations for consistency that were to be addressed by the County and set a compliance date of December 31, 2004; and

WHEREAS, the Town of Kilmarnock began work to come into full compliance with the Act and its Regulations but due to extenuating circumstances, the Town requested an extension to December 31, 2005; and

WHEREAS on February 15, 2005 the Local Program Review Committee for the Northern Area reviewed the circumstances of the Town, the comments of the staff, and recommended that the deadline be extended to December 31, 2005; and

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board extends the date for the Town of Kilmarnock to come into compliance with § 10.1-2109 of the Act and § 9 VAC 10-20-60 3 of the Regulations from December 31, 2004 to December 31, 2005.

BE IT FURTHER RESOLVED that the conditions previously imposed and still applicable for a finding of consistency are as follows:

1. The discussion of the protection of potable water supply should be expanded to identify existing and potential non-point sources of pollution, such as above ground and underground storage tanks or landfills and illegal dumps, and point sources such as stormwater outfalls and abandoned wells. The Plan should also include policies and implementation strategies to address any identified pollution sources.
2. The Plan should include a discussion of water conservation measures if they are determined to be needed based on the aquifers identified and water use trends.
3. The Plan should include a specific discussion of the water quality effects of stream bank erosion, an analysis of existing conditions in the Town, including appropriate maps and policies, and implementation strategies to address identified erosion issues.
4. The Plan should discuss specific opportunities for water quality improvements that might be achieved through the redevelopment of already developed areas and should establish Town policies and implementation strategies to address this issue.

BE IT FINALLY RESOLVED that failure by the Town of Kilmarnock to meet the above established compliance date of December 31, 2005 will result in the local program becoming inconsistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60 3 of the Regulations and subject Kilmarnock to the compliance provisions as set forth in § 10.1-2103 10 of the Act and § 9 VAC 10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on March 21, 2005 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
March 21, 2005
RESOLUTION

LOCAL PROGRAM, PHASE I
TOWN OF MONTROSS - #39

Determination of Consistency– Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9 VAC 10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1 (a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the Town of Montross adopted an amended Phase I local program to comply with §§ 9 VAC 10-20-60 1 and 2 on December 16, 2003; and

WHEREAS on June 21, 2004 the Chesapeake Bay Local Assistance Board found the Montross' Phase I program consistent with one recommendation for consistency that was to be addressed by the Town and set a compliance date of December 31, 2004; and

WHEREAS the Town Council for the Town of Montross adopted amendments to the Phase I program on December 13, 2004; and

WHEREAS staff has reviewed the Town of Montross' revised Phase I program for consistency with the previous consistency recommendations and the Act and Regulations; and

WHEREAS on February 15, 2005 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendations in the staff report and of the Review Committee; now

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the Town of Montross' Phase I program consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on March 21, 2005.

Joseph H. Maroon
Director
Department of Conservation and Recreation

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
March 21, 2005
RESOLUTION

LOCAL PROGRAM, PHASE I
NORTHUMBERLAND COUNTY - #7

Determination of Consistency– Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9 VAC 10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1 (a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS Northumberland County adopted an amended Phase I local program to comply with §§ 9 VAC 10-20-60 1 and 2 on February 11, 2004; and

WHEREAS on June 21, 2004 the Chesapeake Bay Local Assistance Board found the Northumberland County's Phase I program consistent with five recommendations for consistency that were to be addressed by the County and set a compliance date of December 31, 2004; and

WHEREAS the Board of Supervisors for Northumberland County adopted amendments to the Phase I program on October 14, 2004; and

WHEREAS staff has reviewed Northumberland's revised Phase I program for consistency with the previous consistency recommendations and the Act and Regulations; and

WHEREAS on February 15, 2005 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendations in the staff report and of the Review Committee; now

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds Northumberland County's Phase I program consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on March 21, 2005.

Joseph H. Maroon
Director
Department of Conservation and Recreation

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
March 21, 2005
RESOLUTION

LOCAL PROGRAM, PHASE I
WESTMORELAND COUNTY - #04

Determination of Consistency– Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9 VAC 10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1 (a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS Westmoreland County adopted an amended Phase I local program to comply with §§ 9 VAC 10-20-60 1 and 2 on March 10, 2003; and

WHEREAS on September 15, 2003, Westmoreland County's Phase I program was found consistent with conditions by the Chesapeake Bay Local Assistance Board, and

WHEREAS Westmoreland adopted revisions to its local program to address the conditions outlined in the Resolution of the Chesapeake Bay Local Assistance Board on December 4, 2003; and

WHEREAS on June 21, 2004 the Chesapeake Bay Local Assistance Board found Westmoreland County's Phase I program inconsistent with four recommendations for consistency that were to be addressed by the County and set a compliance date of September 30, 2004; and

WHEREAS the Board of Supervisors for Westmoreland County adopted amendments to the Phase I program on August 9, 2004; and

WHEREAS staff has reviewed Westmoreland's revised Phase I program for consistency with previous consistency recommendations and the Act and Regulations; and

WHEREAS on February 15, 2005 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendations in the staff report and of the Review Committee; now

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds Westmoreland County's Phase I program consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on March 21, 2005.

Joseph H. Maroon
Director
Department of Conservation and Recreation

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

March 21, 2005

RESOLUTION

LOCAL PROGRAM, PHASE I
KING WILLIAM COUNTY - #29

Modification – Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9 VAC 10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1 (a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS King William County adopted a local Phase I program on March 28, 1991, and amended it on September 26, 1991, and

WHEREAS on December 5, 1991, the County's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

WHEREAS on December 10, 2001, the Chesapeake Bay Local Assistance Board adopted revisions to the Chesapeake Bay Preservation Area Designation and Management Regulations and set March 1, 2003 as the deadline for local governments to adopt revisions to their local ordinances; and

WHEREAS on February 18, 2003, the Chesapeake Bay Local Assistance Board extended the compliance deadline from March 1, 2003 to December 31, 2003, and

WHEREAS King William County adopted a revised local program to comply with §§ 9 VAC 10-20-60 1 and 2 of the Regulations on November 22, 2004; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

WHEREAS staff reviewed the amendments made to King William County's revised program for consistency with the Act and Regulations; and

WHEREAS on February 15, 2005 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds King William County's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on March 21, 2005 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
March 21, 2005
RESOLUTION

LOCAL PROGRAM - PHASE II
WESTMORELAND COUNTY - #82

Determination of Consistency – Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of state waters into each locality's comprehensive plan; and

WHEREAS § 9 VAC 10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the element in subsection 3 shall be adopted by local governments; and

WHEREAS § 10.1-2103 10 of the Chesapeake Bay Preservation Act authorizes the Board to take administrative and legal actions to ensure compliance by counties, cities, and towns with the provisions of the Act; and

WHEREAS Westmoreland County adopted a comprehensive plan in 1999, with amendments through November 8, 2004; and

WHEREAS staff has reviewed the Westmoreland County's comprehensive plan and its various components for compliance with the Act and Regulations; and

WHEREAS on February 15, 2005, the Local Review Committee of the Northern Area considered and evaluated the information contained in the staff report and supplemental

information provided by the County and concurred with the staff recommendation as outlined in the staff report; and

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendations in the staff report and of the Review Committee; now

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds Westmoreland County's comprehensive plan consistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60 3 of the Regulations

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on March 21, 2005 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
March 21, 2005
RESOLUTION

LOCAL PROGRAM - PHASE II
FAIRFAX COUNTY - # 32

Determination of Consistency - Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall incorporate protection of the quality of state waters into each locality's comprehensive plan; and

WHEREAS § 9 VAC 10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the element in subsection 3 shall be adopted by local governments; and

WHEREAS § 10.1-2103 10 of the Chesapeake Bay Preservation Act authorizes the Board to take administrative and legal actions to ensure compliance by counties, cities, and towns with the provisions of the Act; and

WHEREAS the County of Fairfax adopted a Comprehensive Plan in 1990, with amendments through November 20, 2000; and

WHEREAS on March 19, 2001 the Chesapeake Bay Local Assistance Board found Fairfax County's plan consistent with four recommendations for consistency that were to be addressed by the County and set a compliance date of December 31, 2003; and

WHEREAS on March 22, 2004, the Board granted the County's request for a deadline extension to December 31, 2004; and

WHEREAS the Board of Supervisors for Fairfax County adopted amendments to the comprehensive plan on November 15, 2004; and

WHEREAS staff has reviewed Fairfax County's comprehensive plan for consistency with the previous consistency recommendations and the Act and Regulations; and

WHEREAS on February 15, 2005 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendations in the staff report and of the Review Committee; now

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the Fairfax County's comprehensive plan consistent with § 10.1-2109 of the Act and § 9 VAC 10-20-60.3 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on March 21, 2005.

Joseph H. Maroon
Director
Department of Conservation and Recreation

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

March 21, 2005

RESOLUTION

LOCAL PROGRAM, PHASE I
CITY OF PORTSMOUTH-#27

Modification – Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate

protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9 VAC 10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the City of Portsmouth adopted a local Phase I program on August 28, 1990, and

WHEREAS on March 7, 1991, the City's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

WHEREAS on December 10, 2001, the Chesapeake Bay Local Assistance Board adopted revisions to the Chesapeake Bay Preservation Area Designation and Management Regulations and set March 1, 2003 as the deadline for local governments to adopt revisions to their local ordinances; and

WHEREAS on February 18, 2003, the Chesapeake Bay Local Assistance Board extended the compliance deadline from March 1, 2003 to December 31, 2003, and

WHEREAS the City of Portsmouth adopted a revised local program to comply with §§ 9 VAC 10-20-60 1 and 2 of the Regulations on January 13, 2004; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

WHEREAS on June 21, 2004, the Chesapeake Bay Local Assistance Board found the City of Portsmouth's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations provided the City adequately addressed two conditions by December 31, 2004; and

WHEREAS the City of Portsmouth amended its local program on December 14, 2004 to comply with the Board's June 21, 2004 resolution; and

WHEREAS staff reviewed the amendments made to the City of Portsmouth's revised program for consistency with the Act and Regulations; and

WHEREAS on February 15, 2005 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the City of Portsmouth's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on March 21, 2005 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

March 21, 2005

RESOLUTION

LOCAL PROGRAM, PHASE I
CITY OF VIRGINIA BEACH - #15

Modification – Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9 VAC 10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the City of Virginia Beach adopted a local Phase I program on November 6, 1992, and

WHEREAS on February 25, 1993, the City's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

WHEREAS on December 10, 2001, the Chesapeake Bay Local Assistance Board adopted revisions to the Chesapeake Bay Preservation Area Designation and Management Regulations and set March 1, 2003 as the deadline for local governments to adopt revisions to their local ordinances; and

WHEREAS on February 18, 2003, the Chesapeake Bay Local Assistance Board extended the compliance deadline from March 1, 2003 to December 31, 2003, and

WHEREAS the City of Virginia Beach adopted a revised local program to comply with §§ 9 VAC 10-20-60 1 and 2 of the Regulations on December 9, 2003; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

WHEREAS on June 21, 2004, the Chesapeake Bay Local Assistance Board found the City of Virginia Beach's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations provided the City adequately address six conditions by December 31, 2004; and

WHEREAS the City of Virginia Beach amended its local program on December 7, 2004 to comply with the Board's June 21, 2004 resolution; and

WHEREAS staff reviewed the amendments made to the City of Virginia Beach's revised program for consistency with the Act and Regulations; and

WHEREAS on February 15, 2005 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the City of Virginia Beach's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on March 21, 2005 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
March 21, 2005
RESOLUTION

LOCAL PROGRAM, PHASE I
ISLE OF WIGHT COUNTY - #9

Modification – Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9 VAC 10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1 (a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS Isle of Wight County adopted a local Phase I program on November 15, 1990, and

WHEREAS on May 6, 1992, the County's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

WHEREAS on December 10, 2001, the Chesapeake Bay Local Assistance Board adopted revisions to the Chesapeake Bay Preservation Area Designation and Management Regulations and set March 1, 2003 as the deadline for local governments to adopt revisions to their local ordinances; and

WHEREAS on February 18, 2003, the Chesapeake Bay Local Assistance Board extended the compliance deadline from March 1, 2003 to December 31, 2003, and

WHEREAS Isle of Wight County adopted a revised local program to comply with §§ 9 VAC 10-20-60 1 and 2 of the Regulations on December 18, 2003; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

WHEREAS on June 21, 2004, the Chesapeake Bay Local Assistance Board found Isle of Wight County's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations provided the County adequately address one condition by December 31, 2004; and

WHEREAS Isle of Wight County amended its local program on December 16, 2004 to comply with the Board's June 21, 2004 resolution; and

WHEREAS staff reviewed the amendments made to Isle of Wight County's revised program for consistency with the Act and Regulations; and

WHEREAS on February 15, 2005 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds Isle of Wight County's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on March 21, 2005 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Local Program Reviews – Local Ordinance Reviews

Chesterfield County – Phase I Revisions

Mr. Helmboldt presented the report for Chesterfield County. He recognized Joan Salvati, Water Quality Administrator for the County.

Chesterfield County's Phase I ordinance was first adopted by the County Board of Supervisors on October 10, 1990 and was found consistent on March 27, 1997. The Board most recently found the County's Phase I program consistent on December 9, 2002 after the County adopted their Watershed Management Master Plan and Maintenance Program, resulting in a major program modification.

The County's attempt to adopt the current revised Regulations has run into numerous roadblocks over the course of the last 12+ months. After several meetings and discussions with Joe Maroon, Scott Crafton, and Division staff, the Board of Supervisors adopted a revised Bay Act ordinance on November 23, 2004, incorporating most of the required changes to the Regulations.

However, several revisions to the County's ordinance are not consistent with the Regulations. Prior to the SARC meeting, staff spoke with Ms. Salvati about the Recommendations. Several were determined to be the result of misinterpretation of Code requirements and can be easily remedied by modifying the language to articulate the requirements more clearly.

During some considerable discussions at the SARC meeting Ms. Salvati agreed that the County could make several changes to the County's ordinance to more clearly articulate the intent and requirements that caused concern.

Additionally, it was agreed that several of the recommendations would not materially affect the administration of the County's Bay Act program. As a result a couple of consistency issues were changed in the staff report to suggestions for clarification.

Also, the number of Recommendations was reduced from 9 to a total of 5, and SARC moved to find the County consistent with conditions rather than inconsistent as initially recommended by staff.

Mr. Helmboldt reviewed the Recommendations:

The County's General Performance Criteria were revised to include the changes to the Regulations pertaining to agricultural uses, however the County's ordinance contains a clause exempting agricultural uses from the requirements of the General Performance Criteria in the Resource Management Area (RMA). The section does state that an agricultural assessment is required, but staff's concern is that the exemption could be interpreted to exempt agricultural uses from this requirement or exempt them from the General Performance Criteria when building agriculture-related structures (such as barns, storage facilities, etc).

Ms. Salvati noted that the farming community was concerned with being "painted with the same brush" as the developers, which resulted in this language addition.

Recommendation #1:

For consistency with § 9 VAC 10-20-120 9 of the Regulations, amend § 19-233(h) of the County's General Performance Criteria by clarifying that the exemption to the General Performance Criteria for agricultural lands and activities in the RMA does not apply to the requirement for a soil and water quality conservation assessment.

Recommendation# 2:

For consistency with § 9 VAC 10-20-40 of the Regulations, amend § 19-301 to include the revised definitions of *Highly Erodible Soils* and *Highly Permeable Soils* and add the definition for *Public Road*.

The County's revised General Performance Criteria provide for maintenance agreements when BMPs are utilized. A clause in the ordinance states that "apartment developments outside the Swift Creek Reservoir Watershed are excluded" from the requirement. Ms. Salvati clarified at SARC that the exclusion refers to the requirement for a surety bond, not the maintenance agreement itself.

Recommendation #3:

For consistency with § 9 VAC 10-20-120 3 of the Regulations, amend § 19-233(h) by clarifying that the exemption applies to the requirement for *surety bonds*, not the BMP maintenance agreements for apartment developments outside of the Swift Creek Reservoir Watershed.

Recommendation #4:

For consistency with § 9 VAC 10-20-150 C 4 of the Regulations, amend § 19-236 of the County's ordinance, Non-conforming uses, vested rights and other exceptions, to stipulate that administrative waivers for the expansion of nonconforming structures shall apply only to principal structures and shall not be applied to requests for the expansion of accessory structures in the RPA.

The County's revised ordinance includes revisions allowing administrative waivers to permit encroachments into the landward 50 feet of the RPA buffer on pre-Bay Act lots. However, the final subsection of this division [Section 19-232(d) 1 d] outlines a process whereby a written request for an exception to the permitted encroachment criteria is to be made to the director of environmental engineering. Staff is concerned that this last subdivision either explicitly or implicitly permits the entire exception process to be circumvented.

Recommendation #5:

For consistency with § 9 VAC 10-20-150 C of the Regulations, delete § 19-232(d) 1 d and specify the administrative exception process in § 19-232(d) 1. Should the County choose to retain the waiver request submission requirements, they should be incorporated into the main body of § 19-232(d) 1 such that it reads:

When the application of the RPA buffer area would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, encroachments into the RPA buffer area may be permitted by the Director of Environmental Engineering. A written request shall identify the impact of the proposed exception on water quality, on public safety and on lands within the resource protection area through the completion of a water quality impact assessment that complies with section 19-232 (e) and shall be in accordance with the following criteria:

As a result, staff recommends that Chesterfield County's revised Bay Act Ordinance be found consistent with five conditions. It is staff's recommendation that the County be required to undertake and complete the five recommendations no later than September 30, 2005.

Mr. Davis asked if Ms. Salvati had additional comments.

Ms. Salvati noted that as she stated at the SARC meeting she wanted to express to the full Board the County's appreciation for its patience. She noted that the County had a difficult time politically in dealing with the homeowners. She also noted that the County believes these clarifications are positive changes to the ordinance. The County has been actively implementing the key requirements since November.

- MOTION:** Ms. Fitz-Hugh moved that the Chesapeake Bay Local Assistance Board find Chesterfield County's revised Phase I program consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations subject to the following condition that the County undertake and complete the five recommendations contained in the staff report no later than September 30, 2005 and further that failure by Chesterfield County to meet the above established compliance date of September 30, 2005 will result in the local program becoming inconsistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations and subject Chesterfield County to the compliance provisions as set forth in § 10.1-2103 10 of the Act and § 9 VAC 10-20-250 of the Regulations.
- SECOND:** Mr. Froggatt
- DISCUSSION:** None
- VOTE:** Motion carried unanimously.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

March 21, 2005

RESOLUTION

LOCAL PROGRAM, PHASE I
CHESTERFIELD COUNTY - #19

Modification – Conditional

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9 VAC 10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS Chesterfield County adopted a local Phase I program on October 10, 1990, and

WHEREAS on March 27, 1997, the County's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

WHEREAS on December 10, 2001, the Chesapeake Bay Local Assistance Board adopted revisions to the Chesapeake Bay Preservation Area Designation and Management Regulations

and set March 1, 2003 as the deadline for local governments to adopt revisions to their local ordinances; and

WHEREAS on February 18, 2003, the Chesapeake Bay Local Assistance Board extended the compliance deadline from March 1, 2003 to December 31, 2003, and

WHEREAS Chesterfield County adopted a revised local program to comply with §§ 9 VAC 10-20-60 1 and 2 of the Regulations on November 23, 2004; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

WHEREAS staff reviewed the amendments made to Chesterfield County's revised program for consistency with the Act and Regulations; and

WHEREAS on February 15, 2005 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds Chesterfield County's revised Phase I program consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations subject to the following condition that the County undertake and complete the five following recommendations no later than September 30, 2005:

1. For consistency with § 9 VAC 10-20-120 9 of the Regulations, amend § 19-233(h) of the County's General Performance Criteria by clarifying that the exemption to the General Performance Criteria for agricultural lands and activities in the RMA does not apply to the requirement for a soil and water quality conservation assessment.
2. For consistency with § 9 VAC 10-20-40 of the Regulations, amend § 19-301 to include the revised definitions of *Highly Erodible Soils* and *Highly Permeable Soils* and add the definition for *Public Road*.
3. For consistency with § 9 VAC 10-20-120 3 of the Regulations, amend § 19-233(h) by clarifying that the exemption applies to the requirement for *surety bonds*, not the BMP maintenance agreements for apartment developments outside of the Swift Creek Reservoir Watershed.
4. For consistency with § 9VAC 10-20-150 C 4 of the Regulations, amend § 19-236 of the County's ordinance, Non-conforming uses, vested rights and other exceptions, to stipulate that administrative waivers for the expansion of nonconforming structures shall

apply only to principal structures and shall not be applied to requests for the expansion of accessory structures in the RPA.

5. For consistency with § 9 VAC 10-20-150 C of the Regulations, delete § 19-232(d) 1 d and specify the administrative exception process in § 19-232(d) 1. Should the County choose to retain the waiver request submission requirements, they should be incorporated into the main body of § 19-232(d) 1 such that it reads:

When the application of the RPA buffer area would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, encroachments into the RPA buffer area may be permitted by the Director of Environmental Engineering. A written request shall identify the impact of the proposed exception on water quality, on public safety and on lands within the resource protection area through the completion of a water quality impact assessment that complies with section 19-232 (e) and shall be in accordance with the following criteria:

BE IT FINALLY RESOLVED that failure by Chesterfield County to meet the above established compliance date of September 30, 2005 will result in the local program becoming inconsistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations and subject Chesterfield County to the compliance provisions as set forth in § 10.1-2103 10 of the Act and § 9VAC10-20-250 of the Regulations.

The Director of the Chesapeake Bay Local Assistance Department certifies that this resolution was adopted in open session on March 21, 2005 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

City of Richmond

Mr. Helmboldt presented the report for the City of Richmond. He recognized Debra Byrd, Permits & Engineering Services Administrator for the City of Richmond.

The City's Phase I ordinance was first adopted by the City Council on November 11, 1991 and was found consistent on June 25, 1993.

As a result of concerns that the City had regarding the revised Regulations and the potential legal implications, specifically those relating to litigation which the City was engaged in over the course of the past couple of years, the City chose to defer adoption of a revised Bay Act ordinance until the litigation was completed and upon review of their concerns.

City staff met with Joe Maroon, Scott Crafton, Roger Chaffe and staff members on several occasions in an attempt to address the City's concerns. Richmond City Council adopted their revised Bay Act ordinance on December 13, 2004, incorporating most of the required changes to the Regulations. However there remain three Recommendations for consistency:

First, the City of Richmond has approximately 450-600 homes that still utilize septic systems. As the systems fail, the City requires that homeowners connect to the municipal sanitary sewer system. The existing systems are tracked by the City Health Department, and pump-out notices are sent out to homeowners as needed. However, the City failed to retain the five-year pump-out requirement for onsite sewage disposal systems.

Recommendation #1:

For consistency with § 9 VAC 10-20-120 7 a of the Regulations, amend § 50-331 of the City's General Performance Criteria by adding the requirement for five-year pump-out of onsite septic systems.

Ms. Byrd informed those at SARC that the requirement would be included in the City Health Department's ordinance as opposed to the City's Bay Act ordinance General Performance Criteria as recommended in the staff report.

Recommendation #2:

For consistency with § 9 VAC 10-20-150 A 1 of the Regulations, amend § 50-340(a)(1) by changing "*any structure in existence on the effective date of this ordinance*" to specify the City's original program adoption date of November 11, 1991 or any subsequent amendments as the date by which nonconformities are determined to have existed.

At the SARC meeting, Ms. Byrd stated that the City's legal staff felt that it was not a problem as written, but agreed that the change could be made.

The City included in their revised ordinance the provisions for the administrative processing of waivers for the expansion of nonconforming principal structures. However, the City erroneously referenced the applicable review process as being contained in a section of their ordinance that does not exist. In order for the review process to be accurately identified and carried out, the City must amend this section of their ordinance in order to be consistent with the Regulations.

Recommendation #3:

For consistency with § 9 VAC 10-20-150 C 4 of the Regulations, amend § 50-340(c)(5) of the City's ordinance to properly identify and reference the administrative review process applicable to expansion of existing, legal principal structures within the City's revised ordinance. The City must amend this section by striking the reference to subsection (d) and properly cite subsection (c)(2).

Staff recommends that Richmond's revised Bay Act Ordinance be found consistent with three conditions and that the City be required to undertake and complete the three recommendations no later than September 30, 2005.

Ms. Byrd had no further comments.

MOTION: Ms. Fitz-Hugh moved that the Chesapeake Bay Local Assistance Board find the City of Richmond's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations subject to the condition that the City undertake and complete the three recommendations contained in the staff report no later than September 30, 2005 and further that failure by the City of Richmond to meet the above established compliance date of September 30, 2005 will result in the local program becoming inconsistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations and subject the City of Richmond to the compliance provisions as set forth in § 10.1-2103 10 of the Act and § 9 VAC 10-20-250 of the Regulations.

SECOND: Mr. Bulova

DISCUSSION: None

VOTE: Motion carried unanimously.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

March 21, 2005

RESOLUTION

LOCAL PROGRAM, PHASE I
CITY OF RICHMOND - #64

Modification – Conditional

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9 VAC 10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1 (a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the City of Richmond adopted a local Phase I program on November 11, 1991, and

WHEREAS on June 25, 1993, the City's Phase I program was found consistent by the Chesapeake Bay Local Assistance Board, and

WHEREAS on December 10, 2001, the Chesapeake Bay Local Assistance Board adopted revisions to the Chesapeake Bay Preservation Area Designation and Management Regulations and set March 1, 2003 as the deadline for local governments to adopt revisions to their local ordinances; and

WHEREAS on February 18, 2003, the Chesapeake Bay Local Assistance Board extended the compliance deadline from March 1, 2003 to December 31, 2003, and

WHEREAS the City of Richmond adopted a revised local program to comply with §§ 9 VAC 10-20-60 1 and 2 of the Regulations on December 13, 2004; and

WHEREAS the Chesapeake Bay Local Assistance Board has adopted *Procedural Policies for Local Program Review* which addresses, among other items, review of modifications to local programs; and

WHEREAS staff reviewed the amendments made to the City of Richmond's revised program for consistency with the Act and Regulations; and

WHEREAS on February 15, 2005 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the City of Richmond's revised Phase I program consistent with §10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations subject to the following condition that the City undertake and complete the three following recommendations no later than September 30, 2005:

1. For consistency with § 9 VAC 10-20-120 7 a of the Regulations, amend § 50-331 of the City's General Performance Criteria by adding the requirement for five-year pump-out of onsite septic systems. The City may add the option of inspection in lieu of pump-out if they desire.
2. For consistency with § 9 VAC 10-20-150 A 1 of the Regulations, amend § 50-340(a)(1) by changing "*any structure in existence on the effective date of this ordinance*" to specify the City's original program adoption date of November 11, 1991 or any subsequent amendments as the date by which nonconformities are determined to have existed. The revised text should read:

The City may permit the continued use, but not necessarily the expansion, of any structure in existence on ~~the effective date~~ November 11, 1991, or which exists at the time of any amendment to this article of this ordinance.

3. For consistency with § 9 VAC 10-20-150 C 4 of the Regulations, amend § 50-340(c)(5) of the City's ordinance to properly identify and reference the administrative review process applicable to expansion of existing, legal principal structures within the City's revised ordinance. The City must amend this section by striking the reference to subsection (d) and properly cite subsection (c)(2).

BE IT FINALLY RESOLVED that failure by the City of Richmond to meet the above established compliance date of September 30, 2005 will result in the local program becoming inconsistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations and subject the City of Richmond to the compliance provisions as set forth in § 10.1-2103 10 of the Act and § 9 VAC 10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on March 21, 2005 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Town of Exmore

Ms. Smith presented the report from the Town of Exmore. She recognized Ms. Katrina Hickman, Town Clerk as present at the meeting.

The Town of Exmore's revised program was found inconsistent by the Board on March 22, 2004, and the Board established September 30, 2004 as the deadline for the Town to address the fifteen consistency items.

The Town adopted revisions on October 13, 2004 and March 2, 2005. The October revisions addressed 8 of the 15 recommendations, and at the February SARC meeting, the Town indicated that it was willing to make additional revisions to address the remaining items. The Town did so on March 2, 2005.

The consistency items related to a variety of requirements, among these were several definition changes, revisions to site plan submission requirements, revisions relating to permitted development in the RPA and conditions for it to occur, and inclusion of requirements for waivers and formal exceptions that matched the Regulations. Staff has reviewed the revised ordinance and recommends that the Town's revised program be found consistent.

MOTION: Ms. Harper moved that the Chesapeake Bay Local Assistance Board find the Town of Exmore's revised Phase I program consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations.

SECOND: Ms. Fitz-Hugh

DISCUSSION: None

VOTE: Motion carried unanimously.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

March 21, 2005

RESOLUTION

LOCAL PROGRAM, PHASE I

TOWN OF EXMORE #76

Modification – Consistent

WHEREAS § 10.1-2109 of the Chesapeake Bay Preservation Act states that counties, cities, and towns in Tidewater Virginia shall designate Chesapeake Bay Preservation Areas and incorporate protection of the quality of state waters in Chesapeake Bay Preservation Areas into local plans and ordinances; and

WHEREAS § 9 VAC 10-20-60 of the Chesapeake Bay Preservation Area Designation and Management Regulations states that the elements in subsections 1(a map delineating Chesapeake Bay Preservation Areas) and 2 (performance criteria applying in Chesapeake Bay Preservation Areas) shall be adopted by local governments; and

WHEREAS the Town of Exmore adopted an amended Phase I local program to comply with §§ 9 VAC 10-20-60 1 and 2 on March 3, 2003; and

WHEREAS on March 22, 2004 the Chesapeake Bay Local Assistance Board found the Town of Exmore's Phase I program inconsistent with 15 recommendations for consistency that were to be addressed by the Town and set a compliance date of September 30, 2004; and

WHEREAS the Town Council for the Town of Exmore adopted amendments to the Phase I program on October 13, 2004; and

WHEREAS staff has reviewed the Town of Exmore's revised Phase I program for consistency with the previous consistency recommendations and the Act and Regulations; and

WHEREAS on February 15, 2005 the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the staff report, and concurred with the staff recommendation as outlined in the staff report; and

WHEREAS on March 2, 2005, the Town of Exmore adopted additional revisions to address the remaining seven outstanding consistency items, and

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendations in the revised staff report and of the Review Committee; and

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the Town of Exmore's revised Phase I program consistent with § 10.1-2109 of the Act and §§ 9 VAC 10-20-60 1 and 2 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on March 21, 2005.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Mr. Davis recognized Mr. Crafton for a change in the Agenda.

Mr. Crafton noted that at the SARC meeting the City of Hampton's program was presented because they had designated more extensive Intensely Developed Areas. Due to political concerns within the City, the City Attorney requested at the SARC meeting that the matter be tabled until the May 3, 2005 SARC meeting.

Mr. Crafton noted that this made it difficult to consult with the Board on this issue. The City asked for a delay in the proceedings in order to have time to fully discuss the matter with City Council.

Staff met with the City on March 17. At that time the City provided additional maps that offered additional information regarding the stormwater management program.

Mr. Crafton noted that Keith Cannady from the City was present at the meeting. Mr. Cannady had no comments.

MOTION: Ms. Fitz-Hugh moved that the Board table the discussion of the City of Hampton's Phase I program until the May 3, 2005 meeting of the Southern Area Review Committee.

SECOND: Mr. Froggatt.

DISCUSSION: None.

VOTE: Motion carried unanimously.

Mr. Maroon noted that this was Item A under Section IV of the Agenda.

Local Program Reviews – Compliance Evaluations

Town of Occoquan

Ms. Mackey gave the report for the Town of Occoquan. She introduced Occoquan Mayor, Pat Conway. Ms. Mackey said that Mrs. Conway and the rest of the Town Council had been a great help to Department staff during the compliance evaluation process.

The Department initiated the Town of Occoquan compliance evaluation in July 2004. The first meeting took place in August with two additional meetings during September 2004. Occoquan is a small, very historic town located along the Occoquan River. The town is predominantly built-out, with limited development opportunities. In recent years development within the Town has been limited in scope and exclusively residential in nature. There are redevelopment opportunities on the horizon, however, particularly along the riverfront in both the commercial town center and older single-family neighborhoods. The Town has designated a Town-wide RMA, with RPA along the Occoquan River and all of the perennial streams, and an IDA along the entire riverfront.

Town staff is very small, which has limited the effectiveness of this program's implementation. The Town Engineer doubles as the Zoning Administrator and serves the Town on a part time, contract basis. The Building Official is also a part time contract employee. These two individuals are responsible for all plan reviews and approvals, erosion and sediment control inspection and enforcement, and building code compliance inspection and enforcement. The Town Engineer/Zoning Administrator is primarily responsible for administration and enforcement of the Town's Bay Act, site plan, subdivision, and erosion and sediment control ordinances.

Bay Act issues are all addressed as part of the plan of development review process. In general, Department staff found during the compliance evaluation that, while the Town staff is conscientious in its review of development applications, there is a need for additional documentation, tracking and monitoring of development activities and program compliance in order to adequately administer and enforce the Chesapeake Bay Preservation Act program.

Initially, four specific recommendations were made with numerous suggestions addressing additional concerns about the plan of development review process and practices. At its February meeting, the members of the Northern Area Review Committee expressed a concern that some of the suggestions were really necessary for compliance. Staff was asked to review their content and to consider upgrading some of the suggestions to recommendations. Additionally, the Committee expressed concern about the Town's limited ability given current staffing circumstances, to actually implement the recommendations by the stated deadline of March 31, 2006 without additional professional assistance.

Given the Committee's concerns, staff reconsidered both recommendations and suggestions, and revised the staff report and resolution accordingly. The staff report the Board will be considering today indicates a total of eight recommendations for compliance.

Department staff met with Town officials on March 11, 2005 to discuss the changes in the staff report and the Committee's concerns regarding the Town's ability to comply within the allotted timeframe. The Town indicated they are comfortable with the recommendations and that they have contracted with the Northern Virginia Regional Commission to provide general planning and development review assistance. They have also included a specific task order outlining the activities necessary for the Town to come into compliance with the recommendations outlined in the staff report.

The first recommendation requires the Town to revise its Chesapeake Bay Preservation Areas map to reflect the designated RPA as outlined in the Town ordinance. The written description of the RPA in the ordinance includes identified perennial streams as RPA that are not graphically depicted on the official map.

The second recommendation requires the Town to formalize and document the WQIA submission and review process in order to ensure that this requirement in the Regulations is being complied with as required for any land disturbance, development or redevelopment in the RPA, or for development in the RMA at the request of the Town.

The third recommendation requires the Town to ensure ordinance compliance and consistency between projects by developing application forms, review checklists, and guidance documents or policies that are based upon the performance criteria.

The fourth recommendation requires the Town to ensure consistency between projects by developing a written policy defining the pre-development average land cover condition for use when an applicant calculates stormwater management requirements.

The fifth recommendation requires the Town to ensure that long-term maintenance of stormwater management facilities is occurring through the development of a BMP maintenance agreement and tracking program that specifies BMP location, type, installation, inspection and maintenance requirements and history.

The sixth recommendation requires the Town to ensure the adequate and consistent design and construction of BMPs by requiring the development of stormwater management plan review and BMP checklists.

The seventh recommendation requires the Town to develop an RPA exception application, review process, and tracking system.

The eighth recommendation requires that all BMP designs, siting requirements and allowable pollutant removal efficiencies be in accordance with the minimum standards of the *Virginia Stormwater Management Handbook*.

Department staff will continue to be available to assist the Town with their efforts to address the eight recommendations contained in the staff report within the required timeframe. Ms. Mackey thanked Town leadership for their commitment to the program and their willingness to make the changes necessary to comply with the Regulations.

At their February meeting, the Northern Area Review Committee recommended that the Board find certain aspects of the Town's implementation of its Phase I program not fully compliant with the Act and Regulations and that the Town undertake and complete the eight recommendations contained in the staff report no later than March 31, 2006.

Mr. Davis asked Mayor Conway for comments.

Mayor Conway said that working with the Northern Virginia Regional Commission will help the Town with many of their programs. She expressed appreciation to Ms. Mackey for working with the town.

MOTION: Mr. Bulova moved that the Chesapeake Bay Local Assistance Board commend Mayor Conway and Ms. Mackey for working to make the program consistent, that the Board find the implementation of certain aspects of the Town of Occoquan's Phase I program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations, and in order to correct these deficiencies, directs the Town of Occoquan to undertake and complete the eight (8) recommendations contained in the staff report no later than March 31, 2006. Further, failure by the Town of Occoquan to meet the above established compliance date of March 31, 2006 will result in the local program becoming noncompliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and subject the Town of Occoquan to the compliance provisions as set forth in § 10.1-2103.10 of the Act and § 9 VAC 10-20-250 of the Regulations.

SECOND: Mr. Sheffield

DISCUSSION: None

VOTE: Motion carried unanimously.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

March 21, 2005

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION

TOWN OF OCCOQUAN - #34

Local Compliance Evaluation - Conditional

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9 VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS in September, 2004 the Department of Conservation and Recreation conducted a compliance evaluation of the Town of Occoquan's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on February 15, 2005 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the compliance evaluation staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds that the implementation of certain aspects of the Town of Occoquan's Phase I program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations, and in order to correct these deficiencies, directs the Town of Occoquan to undertake and complete the eight (8) recommendations contained in the staff report no later than March 31, 2006:

1. For consistency with § 9 VAC 10-20-60 1 of the Regulations, amend the CBPA map in the Comprehensive Plan to reflect the designated RPA, as outlined in Section 66-193 of the Town ordinance.
2. For consistency with § 9 VAC 10-20-130 6 of the Regulations, formalize and document the WQIA submission process for any proposed land disturbance, development or redevelopment within RPAs, and for development in RMAs when required.
3. For consistency with § 9 VAC 10-20-120 and 130 of the Regulations, develop and use plan of development application forms, review checklists, and guidance documents or policies based upon the Performance Criteria included in Section 66-200 of the Chesapeake Bay Preservation Area Overlay District ordinance.
4. For consistency with § 9 VAC 10-20-120 8 of the Regulations, develop a written policy defining the pre-development average land cover condition for use in calculating stormwater management requirements.

5. For consistency with § 9 VAC 10-20-120 3 of the Regulations, develop a standard BMP maintenance agreement that specifies inspection and maintenance procedures, and a database to track BMP type, installation date, location, inspection and maintenance.
6. For consistency with § 9 VAC 10-20-120 3 of the Regulations, develop stormwater management plan review checklists and BMP checklists.
7. For consistency with § 9 VAC 10-20-150 C 2 of the Regulations, develop an RPA exception application and review process and a tracking database or data management mechanism, as appropriate.
8. For consistency with § 9 VAC 10-20-120 8 of the Regulations, ensure that all BMP designs, siting requirements, and allowable pollutant removal efficiencies are in accordance with those prescribed in the Minimum Standards of the Virginia Stormwater Management Handbook.

BE IT FINALLY RESOLVED that failure by the Town of Occoquan to meet the above established compliance date of March 31, 2006 will result in the local program becoming noncompliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and subject the Town of Occoquan to the compliance provisions as set forth in § 10.1-2103.10 of the Act and § 9 VAC 10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that the Chesapeake Bay Local Assistance Board adopted this resolution in open session on March 21, 2005.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Town of Colonial Beach

Ms. Baldwin presented the report for the Town of Colonial Beach.

The first meeting of the compliance evaluation for Colonial Beach was held in early August 2004. During this meeting, the evaluation process was more fully explained and the Town's general approach and administration of its Bay Act program was discussed. A second meeting was held in the latter part of August to review site plans and conduct field investigations on some of the selected plans. A total of eight plans were reviewed with three of them evaluated in the field.

During the course of the evaluation, Department staff identified areas where Colonial Beach's implementation of its program does not appear to fully comply with the Act and Regulations. As with the findings from previous compliance evaluations, the recommendations and suggestions

concern primarily the lack of documentation in the files. Documents such as WQIAs, inspections, and field notes were largely absent from the files.

With respect to the recommendations, the Town of Colonial Beach must begin to require Water Quality Impact Assessments for any land disturbance, development, or redevelopment in a Resource Protection Area. While the Department recognizes that many elements of a WQIA would be considered during a site plan review, the Town must develop a means to document the actual WQIA as required by the Regulations.

The next two recommendations concern BMP and stormwater management performance criteria. The Town has not required maintenance agreements on any BMPs and, as with many other localities, has not established a formal procedure such as a database for tracking and inspecting them. To fully comply with the Regulations, the Town must begin to record all BMPs and establish a means to ensure routine maintenance and inspection. At this date, Colonial Beach has drafted a sample maintenance agreement, which has been reviewed by the Town's attorney, and the Town anticipates that it will soon begin to implement this measure.

With respect to stormwater management, it does not appear that the Town is requiring sites qualifying as redevelopment to demonstrate the 10% reduction in pollutant loads nor requiring submission of stormwater management plans. Since the Regulations require the 10% reduction for redevelopment sites, the Town must begin to require stormwater management plans that demonstrate how this requirement is met.

The last recommendation is primarily geared towards the recently annexed land that the Town acquired from Westmoreland County in 1994. While most of the Town's existing shoreline has been hardened with little of a fully vegetated buffer remaining, this annexed property still retains much of its natural shoreline. Both the Westmoreland County Wetlands Board and Town should work to ensure that only those applications that meet the criteria for shoreline erosion control projects are approved. The Town must begin to require a WQIA for any proposed shoreline control projects when they are proposed to extend into the RPA and ensure that such projects are necessary, based on the best technical advice, and that the buffer is restored with appropriate vegetation.

The staff report also includes some suggestions, which might assist the Town with improving certain aspects of implementation of its local program. These suggestions are bulleted in the report and are not required for compliance.

Ms. Baldwin said that staff would like to acknowledge the assistance provided by Mr. Chuck Bird, the Town's Zoning Administrator during this evaluation.

Department staff recommended that the Board find that certain aspects of Colonial Beach's implementation of its Phase I program do not fully comply with the Act and Regulations and that the Town undertake and complete the four recommendations contained in the staff report no later than March 30, 2006.

There was no one present from the town.

MOTION: Mr. Duncanson moved that the Chesapeake Bay Local Assistance Board find that the implementation of certain aspects of the Town of Colonial Beach's Phase I program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations, and in order to correct these deficiencies, directs the Town of Colonial Beach to undertake and complete the four recommendations contained in this staff report no later than March 31, 2006, and further that failure by the Town of Colonial Beach to meet the above established compliance date of March 31, 2006 will result in the local program becoming noncompliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and subject the Town of Colonial Beach to the compliance provisions as set forth in § 10.1-2103 10 of the Act and § 9 VAC 10-20-250 of the Regulations.

SECOND: Mr. Bulova

DISCUSSION: None

VOTE Motion carried unanimously.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

March 21, 2005

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION

TOWN OF COLONIAL BEACH - #26

Local Compliance Evaluation - Conditional

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9 VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS in the Fall of 2004, the Chesapeake Bay Local Assistance Department conducted a compliance evaluation of the Town of Colonial Beach Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on February 15, 2005 the Local Program Review Committee for the Northern Area considered and evaluated the information contained in the compliance evaluation staff report and concurred with the staff recommendations as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendations in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds that the implementation of certain aspects of the Town of Colonial Beach's Phase I program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations, and in order to correct these deficiencies, directs the Town of Colonial Beach to undertake and complete the four recommendations contained in this staff report no later than March 31, 2006

1. As required by Section 9 VAC 10-20-130 6 of the Regulations, the Town must document submission of a WQIA for any proposed land disturbance, development or redevelopment within RPAs, and for development in RMAs when required by the Zoning Administrator.
2. To satisfy Section 9 VAC 10-20-120 3 of the Regulations, the Town must complete the development of a BMP database to track type, installation date, location, inspections and maintenance of BMPs. As part of this requirement, the Town must also develop a standard BMP maintenance agreement that specifies inspection and maintenance procedures.
3. To meet the requirements of Section 9 VAC 10-20-120 8 of the Regulations, the Town must require all sites qualifying as redevelopment to reduce the stormwater runoff pollutant loads by 10% and submit stormwater quality management plans for review.
4. In accordance with Section 9 VAC 10-20-130 5 a 4 and Section 9 VAC 10-20-130 6 of the Regulations, the Town must review shoreline erosion projects and require a WQIA for such projects when they are proposed to extend into the RPA. The Town must ensure that such projects are necessary and based on best technical advice and appropriate vegetation is established to stabilize the shoreline and restore the buffer.

BE IT FINALLY RESOLVED that failure by the Town of Colonial Beach to meet the above established compliance date of March 31, 2006 will result in the local program becoming noncompliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and subject the Town of Colonial Beach to the compliance provisions as set forth in § 10.1-2103 10 of the Act and § 9 VAC 10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on March 21, 2005 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Northampton County

Ms. Smith presented the report for Northampton County.

The compliance evaluation process for Northampton County was begun last year. Three meetings were held with County staff, on October 1st, November 10th and site visits on November 30th.

The report summarizes the findings of the checklists, plan reviews and field visits, noting that, in general, the County is enforcing the requirements of its Bay Act program in an appropriate manner. Development in the County has been mostly single-family residential, but larger subdivisions and commercial development pressures are increasing. The County's amended Bay Act program was found consistent by the Board at the June 2004 meeting.

Based on the compliance evaluation, the Department has six recommendations for full compliance, one to ensure that a WQIA is submitted for all land disturbances in the RPA; one relating to update and use of the County's existing BMP database to track and maintain BMPs; another to implement and enforce the County's septic pump-out program. The county still tracks pump-outs as submitted by haulers, but has not sent out notices to tank owners for a number of years.

The County's BZA is the body that considers formal RPA exception requests. One of the issues noted is that the reports prepared by staff do not fully address the required findings and impacts to the RPA. Therefore, another recommendation relates to the formal RPA exception process and the need for the County to develop reports, forms or some other mechanism to ensure that the BZA has complete information on the impacts when considering these requests.

County staff does a good job working with individual property owners on staking the limits of RPAs on lots prior to development. However, on one site with an RPA, the stakes were not noticeable, and land disturbance had occurred within the RPA. To prevent other inadvertent disturbances from happening in the future, the Department recommends that the County place more noticeable fencing, staking or other mechanism to ensure that the limits of the RPA are clearly marked onsite during construction.

The final recommendation relates to stormwater management and the need for the County to ensure that all water quality BMPs are selected, sited and installed in accordance with the requirements of the Virginia Stormwater Handbook. County staff recognizes the need for additional training in stormwater management, and Division staff will work with other Department divisions to help provide training.

Ms. Smith said that the County is to be commended for its continued work in implementing its Bay Act program, as it has always been a cooperative partner in this effort. The recommendations in this report are, by and large, made to further enhance the County's efforts. SARC concurred with staff's recommendation at its February meeting.

Ms. Smith noted that no one was present from the County.

MOTION: Mr. Froggatt moved that the Chesapeake Bay Local Assistance Board find that the implementation of certain aspects of Northampton County's Phase I program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations, and in order to correct these deficiencies, directs Northampton County to undertake and complete six recommendations contained in this staff report no later than March 31, 2006 and further that failure by Northampton County to meet the above established compliance date of March 31, 2006 will result in the local program becoming noncompliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and subject Northampton County to the compliance provisions as set forth in § 10.1-2103 10 of the Act and § 9 VAC 10-20-250 of the Regulations.

SECOND: Ms. Harper

DISCUSSION: None

VOTE: Motion carried unanimously.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

March 21, 2005

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION

NORTHAMPTON COUNTY - #21

Local Compliance Evaluation - Conditional

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9 VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on September 16, 2002 for the purposes of reviewing local Bay Act compliance; and

WHEREAS in fall of 2004, the Chesapeake Bay Local Assistance Department conducted a compliance evaluation of Northampton County's Phase I program in accordance with the adopted compliance evaluation process; and

WHEREAS on February 15, 2005, the Local Program Review Committee for the Southern Area considered and evaluated the information contained in the compliance evaluation staff report and concurred with the staff recommendation as outlined in the staff report; and,

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report and of the Review Committee; now,

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds that the implementation of certain aspects of Northampton County's Phase I program do not fully comply with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and, in order to correct these deficiencies, directs Northampton County to undertake and complete six recommendations contained in this staff report no later than March 31, 2006.

1. The County shall ensure that a WQIA is submitted and reviewed for all land disturbances in the RPA, including shoreline erosion control projects, approved administrative waivers and exceptions and all other permitted uses and development.
2. The County shall use the existing database or develop some other appropriate method of tracking BMP installation as well as regular maintenance activities as required under § 9 VAC 10-20-120 3 of the Regulations.
3. The County shall implement and track its onsite septic system options for compliance with § 9 VAC 10-20-120 7 a.
4. In order to ensure compliance with § 9 VAC 10-20-150 C of the Regulations, the County should develop specific forms and reports for all RPA exception requests.
5. To ensure that the Resource Protection Area remains undisturbed during construction as required under § 9 VAC 10-20-130 3, it is recommended that the County require the installation of safety or silt fencing or other visible barriers along the boundary of the RPA as deemed appropriate by County staff on parcels with RPA present.
6. In order to ensure that the requirements of § 9 VAC 10-20-120 8 are fully met, water quality BMPs must be selected, sited and installed in accordance with the standards outlined in the Virginia Stormwater Management Handbook.

BE IT FINALLY RESOLVED that failure by Northampton County to meet the above established compliance date of March 31, 2006 will result in the local program becoming noncompliant with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations and subject Northampton County to the compliance provisions as set forth in § 10.1-2103 10 of the Act and § 9 VAC 10-20-250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on March 21, 2005 by the Chesapeake Bay Local Assistance Board.

Joseph H. Maroon
Director
Department of Conservation and Recreation

Amendment of Public Participation Guidelines to adjust for merger.

Mr. Davis noted a change in the agenda and called on Mr. Dowling for a presentation.

Mr. Dowling noted that in preparation for reviewing the Chesapeake Bay Act, staff needed authorization by the Board to prepare necessary changes to the Board's Regulatory Public Participation Procedures Regulations. He distributed the following motion for Board consideration.

Motion to bring the Regulatory Public Participation Procedures Regulations up to date:

The Board authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to prepare those changes necessary to bring the Board's Regulatory Public Participation Procedures Regulations, including any attendant forms, into conformance with changes made to the *Code of Virginia* and any other non-discretionary changes to conform with the Virginia Acts of Assembly or with federal law and regulations enacted since the last regulatory amendment.

This authorization is for those changes that are exempt from the Administrative Process Act and are subject only to the Virginia Register Act.

This authorization extends to, but is not limited to, the drafting of the necessary regulatory amendments, and other necessary documents and documentation as well as the coordination necessary to gain approvals from the Secretary of Natural Resources and the Attorney General.

The Board requests that the Director or the Regulatory Coordinator report to the Board on these actions at the next Board meeting. At that time, the Board desires to have a set of proposed actions available for final regulatory action.

Motion made by: Sue H. Fitz-Hugh

Motion seconded by: William E. Duncanson

Action: Motion carried unanimously.

Compliance Updates

Motion for Executive Session

MOTION: Mr. Sheffield moved that the meeting of the Chesapeake Bay Local Assistance Board be recessed and that the Board immediately reconvene in executive closed session for the purpose of consultation with legal counsel and with Department staff about potential litigation, as permitted in subsection 7 of Section 2.2-3711 of the *Code of Virginia* and further that Mr. Maroon, Mr. Crafton, Ms. Little and Ms. Baldwin of the Department staff remain for this closed meeting.

SECOND: Mr. Bulova

VOTE: Ayes – Mr. Bulova, Mr. Davis, Mr. Duncanson, Ms. Fitz-Hugh, Mr. Froggatt, Ms. Harper, Mr. Sheffield.

Nays – None

Absent during vote – None

Absent during meeting – Ms. Roberts, Mr. Rodriguez

Executive Session

MOTION: Mr. Sheffield moved the following Certification of Executive Meeting:

WHEREAS, the Chesapeake Bay Local Assistance Board has convened in executive meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3711, Effective October 1, 2001, of the *Code of Virginia* requires a certification by this Board that such executive meeting was conducted in conformity with Virginia law;

NOW, THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the executive meeting to which this certification resolution applies, and (ii) only such

public business matters as were identified in the motion convening the executive meeting were heard, discussed or considered by the Board.

SECOND: Mr. Bulova

VOTE: Ayes – Mr. Bulova, Mr. Davis, Mr. Duncanson, Ms. Fitz-Hugh, Mr. Froggatt, Ms. Harper, Mr. Sheffield.

Nays – None

Absent during vote – None

Absent during meeting – Ms. Roberts, Mr. Rodriguez

Informal Fact Finding

Town of White Stone

Ms. Baldwin presented the following report. No one from the Town of White Stone was present.

The Town of White Stone adopted verbatim Lancaster County's Bay Act ordinance. As with Lancaster, the Town's ordinance was found inconsistent. The Town was given until December 31, 2004 to address the ten recommendations listed in the staff report. At this time, White Stone has not made any of the required revisions to its Bay Act ordinance.

Ms. Baldwin noted that since Lancaster County is in the midst of revising its ordinance to address six of the ten conditions, the Town of White Stone has indicated that they intend to make those same six revisions to their Bay Act ordinance at the next town council meeting in April.

MOTION: Ms. Harper moved that the Chesapeake Bay Local Assistance Board determine that the Town of White Stone is subject to the compliance provisions as set forth in § 10.1-2103 10 of the Act and §§ 9 VAC 10-20-250 and 9 VAC 10-20-260 of the Regulations and that the Board authorize the Director of the Department of Conservation and Recreation to take appropriate administrative and legal actions as outlined under § 10.1-2103 10 of the Act and § 9 VAC 10-20-260 of the Regulations to compel the Town of White Stone to adopt a consistent Phase I program.

SECOND: Ms. Fitz-Hugh

DISCUSSION: None

VOTE: Motion carried unanimously.

Review of Board Sponsored Activities

Mr. Crafton gave an update regarding the progress from issues raised at the Board retreat. A policy committee meeting is scheduled for Friday, April 22nd. Staff is in process of completing white papers with regard to the following issues.

- The definition of “water dependent facilities” as it pertains to marinas, particularly existing marinas
- Vesting as it pertains to implementation of the Bay Act
- Clarification of standards pertaining to local designation of residential Intensely Developed Areas (IDAs), particularly to address the issue of locating accessory structures within the RPA/buffer on pre-1989 lots
- The definition of “water body with perennial flow” and incorporation of the perennial stream identification guidance
- Appropriate revisions to the stormwater management requirements to conform to the new consolidated DCR/State Stormwater Management Program

New Business

Discussion of James City County revised water bodies with perennial flow protocol scores.

Mr. Crafton gave an overview of the issue. He referenced a memorandum distributed to Board members on March 8, 2005. A copy of that memorandum is available from DCR.

The memorandum concludes:

After reviewing the County’s supporting documentation and discussing the changes with County staff, the Department has concluded that amendments to the James City County’s perennial stream identification thresholds are consistent with the Chesapeake Bay Preservation Act and Regulations. The Department recommends approval of James City County’s amended perennial stream identification thresholds, as follows:

- 28 for the North Carolina Method;
- 24 for the Fairfax County Method.

Mr. Crafton noted that concern had been expressed at the SARC meeting in February and that representatives from the County were present to offer additional comments.

Mr. Maroon noted that previous guidance from the Board had delegated a largely technical review responsibility to the staff. He said that some of the proposals might be controversial. He proposed that each locality proposal on this matter be heard at the respective NARC or SARC meeting. Should there be no problems at that level, DCR will make the determination. Should there be significant concerns, the matter would be brought before the entire Board.

Mr. Maroon clarified that, based on current Board policy, the final authority would rest with the Board.

Mr. Davis recognized Mr. Darryl Cook, James City County Environmental Director. Mr. Cook gave the following statement:

Mr. Chairman, Members of the Board, I appreciate the opportunity to present the process that we went through to arrive at the conclusion that the default threshold numbers contained in the Board's guidance for the two field-indicator perennial flow protocols, the North Carolina and Fairfax County Stream identification methods, were not appropriate for the stream systems in James City County. We conducted an open, transparent, public, collaborative and scientific process that resulted in the proposed adjustments of the two thresholds. Based on stream information collected in the county the proposed adjustments are from 30 to 28 for the North Carolina method and from 25 to 24 for the Fairfax method.

Before I describe the process that was used, I want to present some background on why we decided to review the threshold numbers. The new regulations adopted by this Board with an effective date of March 1, 2002, required that the determination of water bodies with perennial flow could no longer be made based on USGS maps but had to be accomplished by a scientific in-field investigation. As we were locally going through the process of revising our ordinance to bring it into compliance with the new regulations, we realized we did not know how to conduct an in-field investigation for perennial flow. So we hired a consultant in the summer of 2002 to evaluate various methods of perennial flow determination and apply them in Powhatan Creek. Powhatan Creek is one of the County's watersheds where we had recently completed a watershed management plan, which incidentally had as one of its findings that not all perennial streams were protected by buffers using only the USGS maps as guides for determining perennial flow.

The consultant completed the work in the Fall of 2002, which as you may recall was at the end of a 3-year drought. Three field indicator protocols were applied, two of which were the North Carolina and Fairfax county methods, at 25 sites in the watershed at the points of the beginning of perennial flow. The study recommendation was to use the North Carolina method. So we had data on the use of the North Carolina method in James City County even before the development of this Board's perennial flow guidance, which occurred in early 2003.

To move onto discussion of the process, this Board's guidance on perennial flow determination states "that due to expected geologic and physiological difference, the average scoring threshold representing the breakpoint between perennial and intermittent stream reaches may be different from that developed for the North Carolina and Fairfax protocols by as much as 8 to 10 points. For this reason, localities are encouraged to test the protocol to refine the scoring and thresholds for determining perenniality in their jurisdictions." Because of the data that was already contained in our perennial stream study and some results of the determinations made by environmental consultants we

began a process early last year to identify an appropriate threshold for the two methods for use in James City County.

We formed a technical stakeholders group consisting of representatives from 4 local firms that performed the majority of the determination in the county. This group was later enlarged to include members of a policy stakeholders group that helped county staff revise our ordinance. So this effort was open and transparent involving knowledgeable, qualified professionals from the area with experience working in the county applying these methods.

There was general agreement by the professionals that the threshold of 30 was too high for James City County as some perennial determinations were being made in the 24 to 26 range. This was generally consistent with the findings by the consultant the county hired in 2002. The selection of the threshold was based on a statistical analysis of the data collected in Powhatan Creek. As you can see by the handout material, the median was chosen as the threshold value for both methods. It was determined that the median of the data was the more appropriate measure of the central tendency of the data and this was chosen as the threshold for both methods. In addition, for the North Carolina method, 50% of the data fell within a 3 point range around the median. An observation here is that the mean and the median for the North Carolina method were 28.4 and 28.5 respectively which is an indication that the method was consistently applied.

The Board's guidance states that scores within a range of 3 points around the threshold be examined more closely and be subject to field verification. The application of this is that for the threshold of 30, perennial streams could score as low as 27 and intermittent ones as high as 33. With the adjustment in the threshold to 28, then perennial calls could be made as low as 25 and intermittent streams as high as 31. Since the beginning of 2004 when the new field evaluation procedures became mandatory, the county has received data sheets on approximately 250 evaluation points throughout the county using the North Carolina method. These were located in several different watersheds in the County representing about 100 intermittent and 150 perennial streams. The data collected on these streams supports the revised thresholds, as no intermittent stream scored above 29 while several perennial streams were in the range of 25 to 30. In fact, 24 streams were considered perennial in the 25 to 27 range and 52 or approximately 1 in 3 were below 30. While the revised threshold number is only 2 points below the state default value, this difference is important as it allows virtually all the perennial streams observations to be within the revised 3 point range making the interpretation of data consistent with the field observations.

Our process was not only open, transparent, collaborative and scientific, it was also public. Upon completion of the stakeholders group work, the information was first presented to the James City County Board of Supervisors in a work session on June 22, 2004, where the Board of Supervisors had an opportunity to look in much greater detail at an issue than in a formal board meeting. Following that work session on July 27, 2004, the Board considered the policy at a Board meeting. The Board, after receiving comment from people representing both sides of the issue, decided to endorse the revised

thresholds. So I am here not just representing staff but I am here representing the James City County Board of Supervisors.

I understand that this Board has received comments from the Peninsula Housing and Builders Association and I would like to respond to the issues they have raised. Incidentally, this group did participate in the public process and made their concerns known to the Board of Supervisors both before and at the public meeting but weighing all input, the Board of Supervisors did endorse the change. One of the major objections they raise is on scientific grounds. They feel that the data set is too small and only from one watershed in the County. As I mentioned previously, the mean and median of the original data set were almost identical indicating that the method was applied consistently in the study. In addition, the County now has approximately 250 data points that have been evaluated throughout the county, and these data support the conclusions of the Powhatan Creek data regarding the threshold number. One in three of the perennial stream scores was below 30 with about 1 in 6 that were below the 27, which is the lower end of the default range. It was also suggested that these 200+ data points need to be statistically analyzed and included in the effort to develop the threshold value. While the data support the threshold numbers, they cannot be used to help predict the threshold number in the same way as the Powhatan Creek data because Powhatan Creek data are strictly from the transition points from intermittent to perennial streams, while the other data have been randomly evaluated based on development proposals. Very few of these points are from transition points which are used to develop the thresholds.

Concerning the fact that the data was from only one watershed, Powhatan Creek, we believe Powhatan Creek is representative of other watersheds in the County. I did discuss this matter with Dr. Gerald Johnson who is Professor of Geology Emeritus from William and Mary. He submitted a statement which I included in my submission to the Department, in which he states that Powhatan Creek is a typical lower and middle coastal plain stream. While he did not address other factors raised by the Peninsula Housing and Builders Association such as biology, hydrology, etc., he did state in his opinion that geology is the major factor influencing the origination of perennial streams. This is also supported by the paper presenting the most recent documentation of the North Carolina method, where it states on page 3 that sources of variation among stream systems are due primarily to geology or soils, which are inter-related. I served on the Ad Hoc Committee that helped develop the recommendations that have become this Board's perennial stream policy, and there were no supporting data from Virginia to indicate that the perennial stream threshold number of 30, which was developed in the upper Neuse River of North Carolina, was appropriate for Virginia. I do not say that to be critical. It was the only information available at the time. But I mention it to point out that data from a watershed within a relatively small County should be more representative of conditions in other county watersheds than data from another state.

Concerning the process we went through and the stakeholder group, as I stated previously, the group began as a technical group and then was expanded to include the policy committee that helped in the revision of the ordinance. It is being presented that there is not consensus on the group's recommendation, but that is not accurate. There is

unanimous consensus from the seven technical members of the group on this technical issue. I have emails from six of the members stating that and I have the verbal approval of the seventh. There are really only two members of the policy group that have attended these meetings, and any disagreement they have with the recommendation is based on policy or philosophical grounds. They have no training or background in this matter. This is a technical issue, and this decision should be based on the data and not policy considerations.

The State, through this Board, has given localities among other matters the task of protecting water quality through the buffering of perennial streams. The task is a difficult one, but we are only interested in doing the best job with that task. That is why we have gone through this process of adjusting the threshold. The identification of perennial streams is difficult enough without being complicated by a tool that is not accurately representing conditions within James City County.

Concerning the issue of precedence, the Board does not need to make other jurisdictions follow our process, although I feel that it is a good one. However, I would not want to see the Board raise the bar so high that no one except a Fairfax County with the financial resources to map their entire County can adjust the protocols and threshold numbers.

I'm not sure how the process would be improved if we collected more data. We would end up hiring a consultant with credentials of the people that are on our committee already. We are bringing together more experienced viewpoints on this matter than we would have by hiring a single consultant.

Concern was also raised over proposed modifications to the North Carolina method that are being discussed by our committee. The North Carolina method was developed to predict the transition point between ephemeral and intermittent streams as impacts to intermittent and perennial streams are regulated in North Carolina. Therefore, the method was not originally designed to distinguish between intermittent and perennial streams, and some of the 32 metrics are not useful in making that distinction. What we are trying to do - and I might point out that this was the technical team's initiative - is to streamline the current method to eliminate metrics that do not help to determine perennial flow. No decisions have been made at this time. We are going to review a statistical analysis of the data collected to see which metrics do not improve the prediction of perennial flow vs. intermittent and potentially remove them in an attempt to reduce the complexity and cost associated with this determination effort.

Concerning inconsistencies between jurisdictions, any number of land use issues change at the jurisdictional line. Zoning designations change, subdivision and zoning ordinance requirements change, even considering Chesapeake Bay issues, some jurisdictions have county-wide RMA, like James City County, and others have RMAs for a limited area around the RPAs. I do not see how it would create a problem for a stream to be perennial in James City County and not in another jurisdiction. However, a review of the situation revealed that this could only potentially occur on 2 streams that border New Kent County and 2 that border Williamsburg. The majority of our jurisdictional lines are large stream

systems that were already designated as perennial because they were USGS perennial streams.

We feel that we have a good process that was open, transparent, collaborative, scientific, and public. We worked with a knowledgeable team of experts, involved the Board of Supervisors, the public was invited to attend and comment and in the end, the policymakers, the Board of Supervisors agreed with the process and findings. We submitted the results to the division in accordance with the guidance developed by the Board. I hope this answers the Board's questions. If not, I can try to answer any questions you have.

Ms. Fitz-Hugh asked if the homebuilders association expressed the same concerns to the Board of Supervisors prior to the Board's adoption.

Mr. Cook said they did.

Mr. Sheffield asked Mr. Cook how many building sites the County expected to lose.

Mr. Cook said that he did not have an answer for that. He noted that the stream length will be extended. He said that there was no slow down in development since the regulations were changed.

Mr. Sheffield asked if Mr. Cook found a good dialogue with Department staff. Mr. Cook said that he did.

Mr. Davis asked if anyone would like to present additional information regarding James City County.

Mr. Robert Duckett, Director of Public Affairs for the Peninsula Housing and Builders Association addressed the Board.

Mr. Duckett said that members of the association question the need for a different scoring threshold. He said that the association felt the process of determining perennial streams was somewhat unsettling, noting differences between professionals and local staff.

He said that the association recommended that the Board wait until the North Carolina team completes their revisions.

Ms. Fitz-Hugh asked why the homebuilder's association objected and how many lots were expected to be lost.

Mr. Duckett said that in terms of the number of building lots lost, he could not give a specific number.

Ms. Fitz-Hugh noted that this matter had been taken into consideration by the Board of Supervisors and that the homebuilder's association was asking the state to override what the Board of Supervisors has adopted.

Mr. Davis called for additional comment.

Seth Sanders, Chairman of Williamsburg Community Builder's Association, offered concerns regarding how this was impacting lot owners in James City County.

He said that he believed there is an inconsistency in the findings of the James City County staff.

Ms. Fitz-Hugh asked if Mr. Sanders knew the number of lots affected.

Mr. Sanders said there were a number of planned communities. He noted that the topography is such that there are ravines on both sides of many lots. He said that there was enough of a concern that the members of the association have asked him to speak out on the issue.

Mr. Davis asked for staff comments.

Mr. Belo said that staff recognized this review was precedent setting and that staff confirmed that there was an open process.

Mr. Belo affirmed much of Mr. Cook's comments. He said that staff found the scores of 28 and 24 to be consistent with the Chesapeake Bay Act.

Mr. Belo said that North Carolina is reviewing their method, partly based on the experience of Fairfax County. He noted that they are taking some of the data and rearranging it to add additional clarification. However, he said that the scores are not going to change and that the revisions should not affect the way the process works.

Mr. Chaffe asked if the protocol used by James City County is part of its ordinance.

Mr. Cook noted that the ordinance states that any of the approved methods may be used.

MOTION: Ms. Fitz-Hugh moved that the Chesapeake Bay Local Assistance Board accept staff's recommendation to approve James City County's threshold score changes for its perennial flow field indicator methods as adopted by their Board of Supervisors and that the Board recommend to the DCR Director approval of these methods.

SECOND: Mr. Bulova

DISCUSSION: Mr. Maroon said that it was helpful to have this discussion and that he saw no reason to suggest that the approach is in any way incorrect.

VOTE: Motion carried unanimously.

Mr. Davis thanked staff and the members of the public for their comments regarding this issue.

Policy Committee Schedule and Activities

Mr. Crafton said that the Policy Committee will meet on April 22 and again on May 3 to discuss the white paper issues drafted in follow up from the November retreat.

He noted that on May 3 the NARC meeting would begin at 9:30 a.m. and the SARC meeting would begin at 2:30 p.m. This will accommodate a meeting of the Policy Committee.

Proclamation for Previous Board Members

Mr. Crafton presented proclamations for the following former Board Members:

- Colin D. Cowling, of Eastville
- Daniel B. Nice, of Newport News
- Stuart Mendelsohn of Great Falls

Copies of the resolutions are available from DCR.

Approval of 2005 meeting schedule

Some discussion about changing a few days.

The meeting schedule for the remainder of 2005 is as follows:

Southern Area Review Committee

May 3, 2005	2:30 p.m.	DCR-CBLA Conference Room
August 9, 2005	2:00 p.m.	DCR-CBLA Conference Room
October 25, 2005	2:00 p.m.	DCR-CBLA Conference Room

Northern Area Review Committee

May 3, 2005	9:30 a.m.	DCR-CBLA Conference Room
August 9, 2005	10:00 a.m.	DCR-CBLA Conference Room
October 25, 2005	10:00 a.m.	DCR-CBLA Conference Room

Chesapeake Bay Local Assistance Board

June 20, 2005	10:00 a.m.	Location TBD
September 19, 2005	10:00 a.m.	Location TBD
December 5, 2005	10:00 a.m.	Location TBD

Public Comment

There was no additional public comment.

Adjourn

There being no further business, Mr. Bulova moved to adjourn.

Respectfully submitted,

Donald W. Davis
Chairman

Joseph H. Maroon
Recording Secretary

Attachment #1

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
2005 General Assembly Session Budgetary and Legislative Update
March 21, 2005

BUDGET HIGHLIGHTS

Water Quality

- DCR received an additional \$6.5 M in water quality improvement funds for FY 06 meaning that we will have \$30 Million to spend to provide matching grants for controlling nonpoint source pollution resulting from agricultural activities and other activities beginning July 1st. No more than 60% will be allowed to be spent in Chesapeake Bay watershed.
- This is part of the legislature's funding for Chesapeake Bay improvements that included \$50 million to DEQ for wastewater treatment plant upgrades and \$4 million for CSO in Richmond and Lynchburg.
- There will also be a study committee this year of senior legislators who will look at long-term funding needs for the Chesapeake Bay.

Erosion and Sediment Control

- We also received additional funding of \$125,000 to fill two vacant Erosion and Sediment Control positions.

Virginia Land Conservation Foundation

- Land Conservation received \$10 million for the Virginia Land Conservation Foundation staffed by DCR. Added to the \$ 2.5 million already slated for this year means there will be \$12.5 Million available for grants this fiscal year and an additional \$2.5 million next fiscal year.

State Parks

- DCR received substantial support for its State Park System with nearly \$18 million in new funding and 57 new positions added to the budget. The legislature added 30 additional positions bringing the total to 57 new positions which is exactly what we were hoping for going into the legislative session. This level of support is unprecedented in our agency's history.

LEGISLATIVE HIGHLIGHTS

WATER QUALITY

HB2777; SB 1235; and SB810 Capitalizing the Water Quality Improvement Fund.

- With accompanying budget language, authorizes \$50 million from the general fund to the Water Improvement Quality Fund on July 1, 2005.
- The money is to be used solely to finance the costs of design and installation of biological nutrient removal facilities or other nutrient removal technologies at publicly-owned sewage systems.
- In addition, beginning July 1, 2005, the annual appropriations to the Fund provided from the 10 percent general fund surplus and the 10 percent of any unreserved general fund year-end balance will have a different distribution formula.
 - Seventy percent of these moneys will be allocated to the Department of Conservation and Recreation to be used for the implementation of best management practices that reduce nitrogen and phosphorous nonpoint source pollution
 - 30 percent will be allocated to the Department of Environmental Quality to make grants to significant dischargers and to treatment works that utilize the Public-Private Education Facilities and Infrastructure Act, to design and install state-of-the-art nutrient removal technology. The amount of financing available to the treatment facility for point source nutrient removal technologies, whether the source of funding is the 10 percent surplus and 10 unexpended balance, or the \$50 million appropriation, will depend on the financial need of the community, which will be determined by comparing the annual sewer charges expended within the service area to the reasonable sewer costs established for the community.
- The bill also directs the chairman of the committees of oversight to develop recommendations for a permanent source of funding that will clean up the Chesapeake Bay and its tributaries, as well as other impaired waters outside the Bay watershed.

HB2777: House Patrons: Louderback, Cline, Dillard, Janis, Jones, S.C., Landes, Lewis, May, McDonnell, McDougle, Melvin, Moran, Morgan, O'Bannon, Oder, Plum, Pollard, Rust, Shannon, Ware, R.L., Watts, Weatherholtz and Welch

SB1235: Senate Patrons: Quayle and Rerras

SB810: Senate Patron: Williams

House Conferees: Louderback, Cox, Pollard

Senate Conferees: Quayle, Williams, Whipple

HB2862 and SB1275 Nutrient Credit Exchange Program; created.

Establishes a nutrient exchange or trading program that would allow point source dischargers to achieve and maintain compliance with the load cap allocations for nitrogen and phosphorous delivered to the Chesapeake Bay and its tidal tributaries. The State Water Control Board would be required to issue a general permit under the Virginia Pollutant Discharge Elimination System to eligible point source dischargers of nitrogen and phosphorous. The facilities that obtain such a permit, and which are interested in participating in the trading program, would be identified together with their individual load cap allocations and trading ratios. The trading association

authorized by the bill would provide the mechanism by which those permittees under the general permit would be matched with nutrient trading partners. The subsequent trades would be completed and credited without permit modifications.

‘B. Waste load allocations required by this section to offset new or increased delivered total nitrogen and delivered total phosphorus loads shall be acquired in accordance with this subsection.

1. Such allocations may be acquired from one or a combination of the following:

a. Acquisition of all or a portion of the waste load allocations from one or more permitted facilities in the same tributary;

b. Acquisition of nonpoint source load allocations through the use of best management practices acquired through a public or private entity acting on behalf of the land owner. Such best management practices shall achieve reductions beyond those already required by or funded under federal or state law, or the Virginia tributaries strategies plans, and shall be installed in the same tributary in which the new or expanded facility is located and included as conditions of the facility’s individual Virginia Pollutant Discharge Elimination System permit; or

c. Acquisition of allocations in accordance with the terms of the general permit or through such other means as may be approved by the Department on a case-by-case basis.”

HB2862: House Patrons: Bryant, Lingamfelter, Amundson, Athey, Brink, Cline, Cole, Cox, Gear, Hugo, Johnson, Landes, Louderback, Marshall, R.G., McDougle, McQuigg, Morgan, Nutter, O'Bannon, Orrock, Phillips, Plum, Pollard, Reese, Reid, Rust, Saxman, Scott, E.T., Shannon, Sherwood, Shuler, Stump, Ware, R.L., Weatherholtz and Welch;
Senate Patrons: Hawkins, Newman, Reynolds, Watkins and Williams
SB1275: Senate Patron: Watkins

HJ640 Chesapeake Bay; joint subcomm. to study options to provide funding for clean-up.

Establishes an eight-member joint subcommittee to study options to provide a long-term funding source to clean up Virginia's polluted waters, including the Chesapeake Bay and its tributaries. The six legislative members are the chairmen of the money committees and the chairmen of the committees of oversight in the House and Senate. The Secretary of Natural Resources and the Secretary of Agriculture or their designees serve as ex officio voting members.

House Patrons: Callahan, Cox and McQuigg

CHESAPEAKE BAY ACT

SB1103 Chesapeake Bay Local Assistance Department; transferred to DCR: AGENCY BILL

Consummates the merger of the Chesapeake Bay Local Assistance Department and transfer of responsibility for administration of the Chesapeake Bay Preservation Act to the Department of Conservation and Recreation. The bill reflects language in Item 382, Subsection J, of Chapter 4 of the 2004-2006 Appropriation Act enacted during the 2004 Session (Special Session I). The Chesapeake Bay Local Assistance Board continues as the policy board for administration of the Preservation Act.

Senate Patron: Whipple

HB 2378 Wetlands board, local; members that hear cases relating to Ches. Bay Pres. ordinance to serve on.

Allows members of a local board that hears cases relating to the locally adopted Chesapeake Bay Preservation ordinance to also serve on a local wetlands board. Currently, there is a prohibition on members of the wetlands board holding a public office in the county or city. However, there is an exception that allows members of some bodies such as the local planning and zoning commissions, the local erosion commission, and the board of zoning appeals to also serve on the local wetlands board. This bill would add members of this locally established Chesapeake Bay Preservation ordinance board to the list of exceptions.

House Patrons: Rapp and Black

SB1056 Chesapeake Bay Preservation Act; broadens boundaries thereof. [FAILED TO PASS]

Expands the boundaries of the Chesapeake Bay Preservation Act to include the entire watershed of the Chesapeake Bay, not just Tidewater. A similar budget amendment also failed to be included in the Appropriations Act.

Senate Patron: Wagner **[FAILED TO PASS]**

STORMWATER

HB2365 Stormwater management program; updates for Dept. of Conservation & Recreation's authorities: AGENCY BILL

Updates the Department of Conservation and Recreation's stormwater management program authorities including: (i) exemptions to the Administrative Process Act for issuing permits through a federally delegated program, (ii) changing the timing of the terms for the three at-large members of the Soil and Water Conservation Board, (iii) creating new reporting requirements for local plan-approving authorities, and (iv) authorizing the Soil and Water Conservation Board to establish a statewide permit fee schedule for stormwater management related to municipal separate storm sewer system permits. These changes are necessitated to clarify language related to the 2004 Stormwater Management Act consolidation.

House Patron: Bryant

EROSION AND SEDIMENT CONTROL

HB2937 Erosion & sediment control plans; allows the Virginia Soil and Water Conservation Board to issue special order to locality not implementing.

Authorizes the Virginia Soil and Water Conservation Board to issue a special order to a locality that has not taken action to correct the manner in which it is administering its erosion and sediment control program. Those localities which have not initiated or implemented an approved corrective action agreement are subject to a civil penalty not to exceed \$5,000 per day with the maximum amount not to exceed \$20,000 per violation. Prior to issuing a special order, the Virginia Soil and Water Conservation Board is to conduct a formal hearing pursuant to the Administrative Process Act.

House Patron: Dillard

